

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**KENDRICK DORTCH and
RICHARD THOMAS,**

Plaintiffs,

v.

**CITY OF MONTGOMERY and
L.C. CREMEENS,**

Defendants.

CASE NO. 2:07cv1034-MEF

ANSWER OF DEFENDANT, CITY OF MONTGOMERY

COMES NOW Defendant, City of Montgomery, in the above styled action, by and through the undersigned counsel, as answer to Plaintiffs' Complaint, states the following:

II. PARTIES

1. Defendant is without knowledge to admit or deny the allegations in paragraph 1 of Plaintiffs' Complaint therefore denies the allegations and demands strict proof thereof.

2. Defendant is without knowledge to admit or deny the allegations in paragraph 1 of Plaintiffs' Complaint therefore denies the allegations and demands strict proof thereof.

3. Admitted.

4. Admitted.

III. JURISDICTION AND VENUE

5. Defendant denies the allegations of paragraph 5 of Plaintiff's Complaint and, therefore, demands strict proof thereof.

6. Admitted.

IV. BACKGROUND

7. Defendant denies the allegations of paragraph 7 of Plaintiff's Complaint and, therefore, demands strict proof thereof.

8. Defendant denies the allegations of paragraph 8 of Plaintiff's Complaint and, therefore, demands strict proof thereof.

9. Defendant denies the allegations of paragraph 9 of Plaintiff's Complaint and, therefore, demands strict proof thereof.

10. Defendant admits that Tuskegee University and Alabama State University play a football game on Thanksgiving however Defendant denies the remaining allegations in paragraph 10 of Plaintiff's Complaint and demands strict proof thereof.

V. FACTS

11. Defendant denies the allegations in paragraph 11 of Plaintiff's Complaint and demands strict proof thereof.

12. Defendant denies the allegations in paragraph 12 of Plaintiff's Complaint and demands strict proof thereof.

13. Defendant denies the allegations in paragraph 13 of Plaintiff's Complaint and demands strict proof thereof.

14. Defendant denies the allegations contained in paragraph 14 of the Plaintiff's Complaint and demands strict proof thereof.

15. Defendant denies the allegations contained in paragraph 15 of the Plaintiff's Complaint and demands strict proof thereof.

16. Defendant denies the allegations contained in paragraph 16 of the Plaintiff's Complaint and demands strict proof thereof.

17. Defendant denies the allegations contained in paragraph 17 of the Plaintiff's Complaint and demands strict proof thereof.

18. Defendant denies the allegations contained in paragraph 18 of the Plaintiff's Complaint and demands strict proof thereof.

19. Defendant denies the allegations contained in paragraph 19 of the Plaintiff's Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in paragraph 20 of the Plaintiff's Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in paragraph 21 of the Plaintiff's Complaint and demands strict proof thereof.

22. Defendant denies the allegations contained in paragraph 22 of the Plaintiff's Complaint and demands strict proof thereof.

23. Defendant denies the allegations contained in paragraph 23 of the Plaintiff's Complaint and demands strict proof thereof.

24. Defendant denies the allegations contained in paragraph 24 of the Plaintiff's Complaint and demands strict proof thereof.

25. Defendant denies the allegations contained in paragraph 25 of the Plaintiff's Complaint and demands strict proof thereof.

26. Defendant denies the allegations contained in paragraph 26 of the Plaintiff's Complaint and demands strict proof thereof.

27. Defendant denies the allegations contained in paragraph 27 of the Plaintiff's Complaint and demands strict proof thereof.

28. Defendant denies the allegations contained in paragraph 27 of the Plaintiff's Complaint and demands strict proof thereof.

29. Defendant denies the allegations contained in paragraph 29 of the Plaintiff's Complaint and demands strict proof thereof.

30. Defendant denies the allegations contained in paragraph 30 of the Plaintiff's Complaint and demands strict proof thereof.

31. Defendant denies the allegations contained in paragraph 31 of the Plaintiff's Complaint and demands strict proof thereof.

32. Defendant denies the allegations contained in paragraph 32 of the Plaintiff's Complaint and demands strict proof thereof.

33. Defendant denies the allegations contained in paragraph 33 of the Plaintiff's Complaint and demands strict proof thereof.

34. Defendant denies the allegations contained in paragraph 34 of the Plaintiff's Complaint and demands strict proof thereof.

35. Defendant denies the allegations contained in paragraph 35 of the Plaintiff's Complaint and demands strict proof thereof.

36. Defendant denies the allegations contained in paragraph 36 of the Plaintiff's Complaint and demands strict proof thereof.

37. Defendant denies the allegations contained in paragraph 37 of the Plaintiff's Complaint and demands strict proof thereof.

38. Defendant denies the allegations contained in paragraph 38 of the Plaintiff's Complaint and demands strict proof thereof.

VI. FEDERAL CLAIMS

COUNT I – ILLEGAL SEIZURE AND DETENTION

39. Defendant adopts and incorporates the responses contained herein to paragraphs 1-38 of Defendant's Answer to Plaintiff's Complaint.

40. Defendant denies the allegations contained in paragraph 40 of the Plaintiff's Complaint and demands strict proof thereof.

41. Defendant denies the allegations contained in paragraph 41 of the Plaintiff's Complaint and demands strict proof thereof.

42. Defendant denies the allegations contained in paragraph 42 of the Plaintiff's Complaint and demands strict proof thereof.

43. Defendant denies all allegations contained in paragraph 43 of the Plaintiff's Complaint and demands strict proof thereof.

Defendant denies that Plaintiffs are entitled to any relief.

COUNT II – SELECTIVE AND UNEQUAL TREATMENT/DENIAL OF EQUAL PROTECTION OF THE LAW

44. Defendant adopts and incorporates the responses contained herein to paragraphs 1-43 of Defendant's Answer to Plaintiff's Complaint.

45. Defendant denies the allegations contained in paragraph 45 of the Plaintiff's Complaint and demands strict proof thereof.

46. Defendant denies the allegations contained in paragraph 46 of the Plaintiff's Complaint and demands strict proof thereof.

Defendant denies that Plaintiffs are entitled to any relief.

COUNT III – DENIAL OF DUE PROCESS

47. Defendant adopts and incorporates the responses contained herein to paragraphs 1-46 of Defendant's Answer to Plaintiff's Complaint.

48. Defendant denies the allegations contained in paragraph 48 of the Plaintiff's Complaint and demands strict proof thereof.

49. Defendant denies the allegations contained in paragraph 49 of the Plaintiff's Complaint and demands strict proof thereof.

Defendant denies that Plaintiffs are entitled to any relief.

VII. PENDENT STATE CLAIMS

COUNT IV -MALICIOUS PROSECUTION

50. Defendant adopts and incorporates the responses contained herein to paragraphs 1-49 of Defendant's Answer to Plaintiff's Complaint.

51. Defendant denies the allegations contained in paragraph 51 of the Plaintiff's Complaint and demands strict proof thereof.

52. Defendant denies the allegations contained in paragraph 52 of the Plaintiff's Complaint and demands strict proof thereof.

Defendant denies that Plaintiffs are entitled to any relief.

COUNT V – ABUSE OF PROCESS

53. Defendant adopts and incorporates the responses contained herein to paragraphs 1-52 of Defendant's Answer to Plaintiff's Complaint.

54. Defendant denies the allegations contained in paragraph 54 of the Plaintiff's Complaint and demands strict proof thereof.

55. Defendant denies the allegations contained in paragraph 55 of the Plaintiff's Complaint and demands strict proof thereof.

56. Defendant denies the allegations contained in paragraph 56 of the Plaintiff's Complaint and demands strict proof thereof.

Defendant denies that Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant pleads the general issue. Defendant generally denies all material allegations of the Complaint and denies that Plaintiffs are entitled to any relief.

SECOND AFFIRMATIVE DEFENSE

Defendant avers that Plaintiffs' Complaint and each count and cause thereof fails to state a cause of action against Defendant upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Defendant pleads that Plaintiffs' Complaint should be dismissed in there is no evidence of a policy or practice adopted which violated Plaintiffs' constitutional rights nor does Defendant have a policy or custom which is unconstitutional.

FOURTH AFFIRMATIVE DEFENSE

Defendant avers that a municipality is liable only for its own wrong and cannot be held liable under the principles or theories alleged by Plaintiffs to wit: respondeat superior.

FIFTH AFFIRMATIVE DEFENSE

Defendant avers that municipality cannot commit intentional acts or act with malice. *Hardy v. Town of Hayneville*, 50 F. Supp. 2d 1176 (M.D. Ala. 1999).

SIXTH AFFIRMATIVE DEFENSE

Defendant pleads sovereign, substantive, qualified and/or discretionary function immunity.

SEVENTH AFFIRMATIVE DEFENSE

Defendant pleads non-compliance with statutory ante litem claim statutes. *ALA. Code* §§ 11-47-23 and 11-47-192. (1975)

EIGHTH AFFIRMATIVE DEFENSE

Defendant pleads state actor immunity pursuant to the Eleventh Amendment of the Constitution of the United States and Article I § 14, Constitution of Alabama (1901).

NINTH AFFIRMATIVE DEFENSE

Defendant pleads that their actions or practices did not cause a violation of Plaintiffs' constitutional rights.

TENTH AFFIRMATIVE DEFENSE

Defendant avers that Plaintiffs have not been denied equal protection of the laws or due process.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant pleads the applicable statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

Defendant pleads that Plaintiffs were guilty of wantonness, recklessness, intentional acts or criminal acts which proximately caused or contributed to the injuries or damages they claim.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant pleads insufficiency of service of process.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant pleads the general issue and denies any allegations not specifically admitted and demands strict proof thereof.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant pleads that Defendant Cremeens had probable cause and/or arguable probable cause for all actions he took in regard to Plaintiffs.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant pleads immunity from punitive damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants plead Alabama's statutory cap on damages. *ALA. Code* §§ 11-47-190 and 11-93-2.

EIGHTEENTH AFFIRMATIVE DEFENSE

That any award of punitive damages would be in violation of Defendants constitutional rights in that a determination of punitive damages under federal or state law is vague, is not based on any objective standards and is not rationally related to any legitimate governmental purposes.

RESERVATION OF RIGHTS

Defendant adopts and incorporates the Answer with Affirmative Defenses filed by Defendant Cremeens and reserves the right to amend these affirmative defenses as allowed by the Court.

Respectfully submitted this the 20th day of December, 2007.

/s/ Kimberly O. Fehl
Kimberly O. Fehl (FEH001)

OF COUNSEL:

Legal Department

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Montgomery, Alabama 36101-1111

334.241.2050

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system to be served upon the following:

Fred F. Bell, Esq.
1015 South McDonough Street
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/s/ Kimberly O. Fehl
Of Counsel